



**Billing Code: 4165-15**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Part 5b**

**RIN 0906-AA97**

**National Practitioner Data Bank and Privacy Act; Exempt Records System; Technical  
Correction**

**AGENCY:** Health Resources and Services Administration (HRSA).

**ACTION:** Correcting amendments.

**SUMMARY:** These correcting amendments update a cross reference cited in the Privacy Act regulations. The National Practitioner Data Bank (NPDB) system of records (09-15-0054) is exempt from certain provisions of the Privacy Act, and the cross reference cited refers to the regulations that govern the NPDB. As a result of Section 6403 of the Affordable Care Act, the regulations governing the NPDB were revised and certain section numbers in the NPDB regulations were changed, including the NPDB regulation that was cross referenced. This change is technical in nature and does not significantly alter the current NPDB exemption.

**DATES:** This final rule is effective [Insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Ernia Hughes, Acting Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 8-103, Rockville, Maryland 20857; Telephone (301) 443-2300.

**SUPPLEMENTARY INFORMATION**

**I. Background**

The NPDB was established by Title IV of Public Law 99-660, the *Health Care Quality*

*Improvement Act of 1986*, as amended. The NPDB is primarily an alert or flagging system intended to facilitate a comprehensive review of health care practitioners' professional credentials. Section 1128E of the Social Security Act, added by the *Health Insurance Portability and Accountability Act (HIPAA) of 1996*, (P. L. 104-191), created the Health Care Integrity and Protection Data Bank (HIPDB). Because a major component of the HIPAA's purpose was to establish a health care fraud and abuse control program, the legislation required the creation of a national data bank to receive and disclose certain adverse actions against health care practitioners, providers, and suppliers, thus establishing the HIPDB. Together the HIPDB and NPDB served to facilitate the review of health care practitioners' and entities' backgrounds, however, some of the information collected under the HIPDB is also available under the NPDB.

In recognition of the overlapping purposes of the laws governing the two data banks, and to eliminate the duplicative information in both data banks, Section 6403 of the Affordable Care Act required the Secretary for the Department of Health and Human Services (HHS) to merge the data banks so that information previously collected and disclosed under the Section 1128E authority be transferred and made available under the NPDB. In addition, Section 6403 ceases HIPDB operations. The Affordable Care Act effectively streamlines data reporting and disclosure through the merge of the data banks and improves program efficiency around reporting and querying. On April 5, 2013, HRSA published a final rule in the Federal Register (78 FR 20473), implementing the merge of the HIPDB information into the NPDB. The rule became effective on May 6, 2013. All security standards remain in place to protect the confidentiality of the NPDB. Section 1128E information now reported under the NPDB is still only available to those entities authorized to query it.

Because the statute permits the information collected in the NPDB and HIPDB to be used

by federal and state government agencies with the responsibility of investigating and prosecuting violations of civil and criminal laws, the NPDB and HIPDB were made exempt from certain portions of the Privacy Act under two separate provisions, 45 CFR 5b.11(b)(2)(ii)(F) and (L). As cross referenced in this section, the access and correction rights of individuals are detailed in the regulations governing the NPDB and HIPDB.

## **II. Summary of the Correction**

This final rule revises the cross reference found in the Privacy Act regulations at 45 CFR 5b.11(b)(2)(ii)(L) from §60.16 to §60.21, to reflect the changes made to the NPDB regulation required by the Affordable Care Act.

The system of records notice for the NPDB, which was last published in the Federal Register on March 30, 2012, (77 FR 19295), is being republished elsewhere in this issue of the Federal Register to reflect this change.

## **III. Waiver of Proposed Rulemaking**

HHS ordinarily publishes a notice of proposed rulemaking in the Federal Register to provide a period for public comment before the provisions of a rule take effect, in accordance with Section 553(b) of the Administrative Procedure Act (APA)(5 U.S.C. 553(b)). However, this notice and comment procedure can be waived if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the Federal Register. This 30-day delay in effective date can be waived, however, if an agency finds there is good cause to do so, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This document is purely technical in nature and merely corrects a cross-reference in the Privacy Act regulations at 45 CFR 5b.11(b)(2)(ii)(L), from §60.16 to §60.21. The change is not a substantive change and does not alter any rights or obligations. Therefore, the Secretary believes that undertaking further notice and comment procedures to incorporate this correction, which will delay the effective date for this change, is unnecessary. In addition, the Secretary believes it is important for the public to have the correct information as soon as possible, and further believes it is contrary to the public interest to delay the dissemination of it. For the reasons stated above, the Secretary finds there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

## **ECONOMIC AND REGULATORY IMPACT**

This final rule is technical in nature and does not increase regulatory burden. In accordance with the provisions of Executive Orders 13563 and 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612), the Office of Management and Budget has determined that it will have no major effect on the economy or federal expenditures. This rule is not economically significant under section 3(f) of Executive Order 12866 and is not being treated as a “significant regulatory action” under section 3(f). Accordingly, the rule has not been reviewed by the Office of Management and Budget.

The Secretary has determined that this final rule is not a “major rule” within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801, and has determined that it does not meet the criteria for a significant regulatory action. In addition, under the Small Business Enforcement Act (SBEA) of 1996, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could

lessen the impact of the rule. The Secretary has reviewed this exemption in accordance with the provisions of the SBEA and certifies that this exemption will not have a significant impact on a substantial number of small entities.

Similarly, it will not have effects on state, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 requires agencies to meet certain requirements when a rule has “federal implications,” and may have “substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.” The Secretary has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have substantial federalism implications or direct costs and implications for the state and local governments.

**Paperwork Reduction Act**

This final rule does not have any information collection requirements.

**List of Subjects in 45 CFR Part 5b**

Privacy.

Dated: July 5, 2013.

---

**Mary Wakefield, Ph.D., R.N.,**

Administrator,

Health Resources and Services Administration.

Approved: July 26, 2013.

---

**Kathleen Sebelius,**

Secretary.

Amend 45 CFR part 5b as follows:

PART 5b - - PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Revise §5b.11(b)(2)(ii)(L) to read as follows:

§ 5b.11 Exempt systems.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(L) Investigative materials compiled for law enforcement purposes for the National Practitioner Data Bank (NPDB). (See §60.21 of this subchapter for access and correction rights under the NPDB by subjects of the Data Bank.)

\* \* \* \* \*

[FR Doc. 2013-18598 Filed 08/02/2013 at 8:45 am; Publication Date: 08/05/2013]